



Federal Communications Commission
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In Reply Refer to:
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Mr. and Mrs. Robert Vessot
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The Rev. Stephen C. Washburn
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In re: WCRB(FM), Waltham, MA
Facility ID No. 10542
File No. BRH-20051128ADO
Application for Renewal of License

Informal Objections

Dear Mr. and Mrs. Vessot, Rev. Washburn, and Counsel:

This letter concerns the captioned application (the "Application") filed by Charles River Broadcasting WCRB License Corp. ("CRB") to renew the license of Station WCRB(FM), Waltham, Massachusetts. Also on file are informal objections filed by Norma and Robert Vessot (the "Vessots") on February 3, 2006, (the "Vessot Objection") and Rev. Stephen C. Washburn ("Washburn") filed on April 3, 2006, (the "Washburn Objection").¹ For the reasons set forth below, we deny the informal objections and grant the Application.

Background. The Vessot Objection. In their Objection, the Vessots state that they were informed by their local newspaper that WCRB(FM) was going to be sold, pending the renewal of the station's license,² and that the purchasers proposed to change the station's format from classical to country and western music, which "would create a considerable imbalance in the culture of Boston area radio music." The Vessots request that the Commission "postpone this renewal" to allow the continuation of "the only FM station" which plays classical music 24 hours a day, 7 days week.

¹ CRB filed a Joint Opposition to the informal objections on April 19, 2006.

² On August 3, 2006, an application was filed to transfer control of CRB to Greater Media, Inc. (File No. BTCH-20060803AMV). The application is unopposed and remains pending with the staff.

The Washburn Objection. In his objection, Washburn states that he received a letter from a principal of CRB which confirmed that CRB intended to sell the station and that the 24-hour classical format “would likely cease.” In this regard, Washburn asserts that CRB is proposing to sell WCRB(FM) “without safeguarding the intent” of the trust established, “and affirmed by the Commission,” in 1979. Washburn states that he objects to the renewal of the WCRB(FM) license “unless the 1979 restriction affirmed by the FCC is reaffirmed now as a condition of license renewal.” Specifically, Washburn submits that in 1979, the then-licensee principals Ted and Nathalie Jones “preserved the classical format” for future generations by establishing a trust which provided, “with unprecedented Federal Communications Commission approval,” that the station operate as a commercial classical station “for the next 100 years as long as there is a market need.” Washburn asserts that the sale of WCRB(FM) to an owner that would not continue the 24-hour classical format would both “violate the trust and fly in the face of its affirmation by the FCC in 1979.”

Washburn also states that “[he] and other regular listeners have not heard” WCRB(FM)’s pre-filing announcements and suggests that the announcements be rebroadcast to better inform the public of the pendency of the Application. In opposition, CRB states that, despite the fact that Washburn did not hear WCRB(FM)’s pre- and post-filing announcements, the station scheduled and broadcast them in accordance with Commission requirements. It provides both a certification of the dates and times when the announcements were aired and the text that was used in the announcements. Washburn does not dispute these representations by CRB.

Discussion. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Communications Act of 1934, as amended (the “Act”).³ That section provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse. If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁴ The objectors’ allegations, which are founded upon an anticipated format change subsequent to a pending transfer of control of CRB, are not relevant to the staff’s consideration of the WCRB(FM) license renewal application under Section 309(k) and, if anything, are more properly raised in the context of that pending transfer application.⁵ Nevertheless, for administrative convenience, we will address the objectors’ contentions here. We find them to be without merit.

³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁴ 47 U.S.C. §309(k)(1). The renewal standard was amended to read as described by *Section 204(a) of the Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁵ See *Stockholders of CBS, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 3733 (1995).

First, it is the Commission's general policy to leave format issues to the discretion of the licensee.⁶ The Commission has determined that the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters.⁷ Further, the First Amendment to the U.S. Constitution and Section 326 of the Act⁸ generally prohibit any Commission actions which would improperly interfere with the programming decisions of licensees.⁹ In this regard, any favorable action the Commission may take on an application or request only confirms that the permittee or licensee is legally and technically qualified, or otherwise complies with the Commission's rules and regulations, and that grant of the application will serve the public interest, convenience, and necessity. The Commission action does not purport to "affirm" any underlying private agreement, much less one that contravenes Commission policy or the Act, as Washburn suggests in the instant case.¹⁰ Therefore, Washburn's contention that the Commission "affirmed" the intent of the trust as to WCRB(FM)'s music format is without merit.

Finally, Washburn has presented no information to demonstrate that the CRB violated the local public notice provisions of Section 73.3580 in its pre-filing announcements of the filing of WCRB(FM)'s Application. Accordingly, there is no need to further address that matter.¹¹

Conclusion/Actions. We find that neither the Vessot nor Washburn objections contains adequate or specific factual allegations sufficient to warrant further inquiry regarding renewal of WCRB(FM)'s license. Furthermore, pursuant to Section 309(k) of the Act, we find neither evidence of serious violations of the Act or the Commission's Rules nor of other violations that, when considered together, evidence a pattern of abuse. Further, we find that Station WCRB(FM) served the public interest, convenience, and necessity during the subject license term. Accordingly, for the reasons set forth above, pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's rules,¹² the informal objections filed by Norma and Robert Vessot and by Rev. Stephen C. Washburn ARE DENIED, and the application (File No. BRH-20051128ADO) of Charles

⁶ See *Multicultural Radio Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 20630 (2000), citing *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858 (1976).

⁷ *Id.*, citing *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981).

⁸ 47 U.S.C. § 326.

⁹ Section 326 of the Act states in part: "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship ... and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." 47 U.S.C. § 326.

¹⁰ *Cf. Satellite CD Radio, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 7971 (1997) (the standard of review the Commission uses for granting an authorization provides that authorizations will be granted if the Commission finds that the applicant is legally, technically, and otherwise qualified and grant of the application will serve the public interest, convenience, and necessity). As observed in CRB's Joint Opposition, the staff in 1989 granted unconditional consent to the transfer of control of the licensee to a trust – the "Theodore Jones Trust - 1979" – which expressed the intent of the grantor that WCRB(FM) would continue to broadcast classical music. In granting consent, the staff did not ratify the grantor's private intention or impose a programming obligation on the WCRB licensee. See Application No. BTCH-19890711HV, granted August 4, 1989.

¹¹ 47 C.F.R. § 73.3580.

¹² 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.

River Broadcasting WCRB License Corp. for renewal of the license for station WCRB(FM), Waltham, Massachusetts, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc Charles River Broadcasting WCRB License Corp.